



The Attorney General of Texas

March 10, 1983

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Mr. J. Rush Milam, III
McAllen City Attorney
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Open Records Decision No. 362

Re: Whether information in police files relating to execution of search warrant is excepted from public disclosure by section 3(a)(3) or 3(a)(11) of the Open Records Act

Dear Mr. Milam:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether certain information in police department files is available to the public. By letter of November 18, 1982, the McAllen Police Department received a request for information relating to a search warrant executed on December 11, 1980. The requestor seeks to obtain:

1. The name of each officer from your department who participated in any way in executing that search warrant;
2. The name of the officer who twisted the arm of [named individual];
3. The name of the confidential informant who provided the information upon which the search was based.

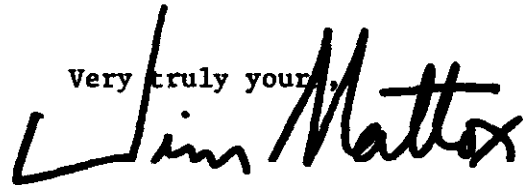
You have furnished us with a list of officers who participated in the search, and contend that this information is excepted from public disclosure by section 3(a)(3) or 3(a)(11). The name of an arresting officer is information specifically declared to be public in Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist] 1975, writ ref'd n.r.e.), 536 S.W.2d 559 (1976). This office has held that an arresting officer's name and his narrative version of a particular incident is disclosable. Open Records Decision Nos. 354 (1982); 127 (1976). In our view, there is no significant distinction, for purposes of the Open Records Act, between an arresting officer and an officer executing a search warrant. The information requested is factual, and thus not excepted

by section 3(a)(11). Furthermore, even if litigation may be reasonably anticipated in this case, such basic factual information has long been treated as routinely available. See Open Records Decision No. 208 (1978). We assume that none of the officers are undercover officers or agents, and you have not advised us to the contrary. See Open Records Decision Nos. 211 (1978) and 143 (1976). We conclude that the names of the officers who participated in executing the search warrant in this case are available to the public.

As to the second item requested, you state that "the city of McAllen categorically denies that any officer or employee of the McAllen Police Department or of the city of McAllen, Texas, engaged in such activity." The Open Records Act does not require a governmental body to make available information which does not exist. Because the city's position is that no person "twisted the arm" of the subject of the search warrant, it cannot supply the requested information.

The name of informants may be withheld under section 3(a)(1) of the Act, as information made confidential by judicial decisions recognizing the informer's privilege, Open Records Decision Nos. 320 (1982); 285 (1981); 172 (1977), as well as under section 3(a)(8), the law enforcement exception, Open Records Decision Nos. 333 (1982); 297 (1981); 127 (1976).

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style. The first letter "J" is large and loops around the "i". The "M" is also large and loops around the "a". The "T" is tall and thin, and the "O" is a simple circle. The "X" is formed by two intersecting diagonal strokes.

J I M M A T T O X
Attorney General of Texas

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Prepared by Rick Gilpin
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APPROVED:
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